

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

LAWRENCE P. ORGAN

Plaintiff,

v.

MARC BYRON, BEN KAAK, and
CATHERINE BARBARO

Defendants.

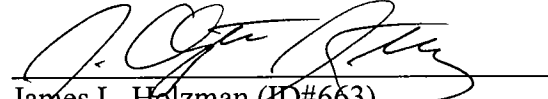
No. 1:05-cv-00867-JJF

MOTION TO DISMISS

Pursuant to Fed. R. Civ. P. 12(b)(6), the Defendants Marc Byron, Ben Kaak and Catherine Barbaro (“Defendants”) hereby move to dismiss the Complaint in this action in its entirety, with prejudice, and submit herewith a Memorandum of Law in support of the motion. As set forth therein, Plaintiff’s Complaint, which alleges only a claim under the Illinois Securities Law of 1953, must be dismissed because of an enforceable choice of law provision requiring Plaintiff to bring his claims under Delaware law. In addition, the Complaint should be dismissed with prejudice because any amendment under Delaware law would be futile as time barred and barred by the express terms of the Merger Agreement signed by the Plaintiff.

WHEREFORE, Defendants pray the Court to dismiss Plaintiff's Complaint, with prejudice.

PRICKETT, JONES & ELLIOTT, P.A.



James L. Holzman (ID#663)

J. Clayton Athey (ID#4378)

1310 King Street

Wilmington, DE 19899

Telephone: (302) 888-6500

jllholzman@prickett.com

jcathey@prickett.com

Of Counsel:

Robert B. Lovett

Christopher F. Robertson

SEYFARTH SHAW, LLP

World Trade Center East

Two Seaport Lane, Suite 300

Boston, MA 02210-2028

Telephone: (617) 946-4800

rlovett@seyfarth.com

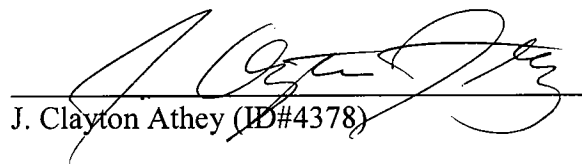
croberson@seyfarth.com

Dated: February 21, 2006

CERTIFICATE OF SERVICE

I, J. Clayton Athey, hereby certify that on this 21st day of February, 2006, I caused a copy of the foregoing MOTION TO DISMISS to be served on counsel for the parties via e-file:

Jeffrey S. Goddess, Esquire
Rosenthal Monhait Gross & Goddess
919 Market Street
Suite 1401
Wilmington, DE 19801


J. Clayton Athey (ID#4378)